

Village of Irvington
Zoning Board of Appeals

Minutes of Meeting held October 24, 2000

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M., Tuesday, October 24, 2000, in the Trustees' Meeting Room, Town Hall, Irvington, N.Y.

The following members and alternate were present:

Louis C. Lustenberger, Chairman
Robert L. Bronnes
Bruce E. Clark
Robert C. Myers
George Rowe, Jr.
Paul Giddins

Mr. Lustenberger acted as Chairman and Mr. Rowe as Secretary of the meeting.

There were two continuations on the agenda, and one new matter.

Continuations

- 2000-16 Kenneth & Debra Bernstein - 9 Greyrock Terrace,
Irvington, NY (Sheet 10D, Block 242, Lot 23)
- 2000-17 Mr. & Mrs. Bhattacharya - 64 Butterwood Lane
East, Irvington, NY (Sheet 13, Lot P54)

New Matter

2000-20 Eileen Fisher - 44 Matthiessen Park, Irvington,
NY (Sheet 2, Lots P109P6, P109P9, P109P3A)

Bernstein

This matter had first been heard at the last meeting of the Board, to the minutes of which reference is made. Thereafter, the Bernsteins and the objectants, the Morins, had presented further memoranda to the Board. All such memoranda are part of the record in this case, as well as the drawings submitted on behalf of the Bernsteins.

The Bernsteins submitted a photograph of a deciduous tree which they proposed to plant in their backyard to protect the privacy of the Morins. The Morins did not accept that proposal, as they pointed out it would only protect privacy during the summer months. The Bernsteins rejected the Morins proposal that large evergreens be so planted, on the theory that planting evergreens of that size was impractical.

The Chairman stated that, in his opinion, the proposed deck would produce a severe detriment to the

Morins, in that it would loom over the Morins' rear-yard patio, a condition that would be exacerbated by the fact that the Bernsteins' house itself is built on a slope and overlooks the Morins' yard. The Chairman noted that, in weighing the benefits to the Bernsteins against the detriments to nearby properties, the balance seemed to fall clearly in favor of the Morins. He noted, moreover, that the Bernsteins already enjoyed a patio at ground level below the proposed deck, although admittedly it was not as convenient as a deck would be. He recognized the Bernstein? argument that many lots in Cedar Ridge are non-conforming but those did not seem of precedential value here, including the Tardio lot, cited by applicants. He noted that the instant application did not qualify as a hardship case. He stated that he had reviewed the Bernstein? argument on estoppel, but did not find it persuasive. Upon the Chairman's motion, duly seconded, the application was unanimously denied by the Board.

Bhattacharya

This matter had first appeared on the agenda of the last meeting of the Board, but was not heard because of inadequate notice.

Mr. Bhattacharya and Paul J. Petretti, P.E., L.S., both appeared in support of the applicants. Applicants here, who seek to make additions to their residence, seek an area variance for building coverage.

The Board was advised that the only reason a variance was needed was because the property included a concrete courtyard which straddled the Bhattacharyas' property and a neighbor's property and had existed at the time the Butterwood subdivision was approved by the Planning Board. But for the existence of that concrete courtyard, Mr. Petretti noted no variance would be required. The applicable regulations treat the courtyard as a structure, and this fact occasioned the building inspector's denial of a building permit.

The applicants had produced a site plan, showing the lots as they were originally laid out in the Butterwood subdivision, a subdivision approved by the Planning Board.

Although the subdivision plan does not show that concrete courtyard, the Board was satisfied that in fact it had existed at the time. The Chairman noted a variance is required, since the proposed addition, after giving effect to the coverage of the courtyard, is an increase of a pre-existing non-conforming use. On the Chairman's motion, duly seconded, the Board unanimously approved the variance sought.

Fisher

Mrs. Fisher was represented by Earl Everett Ferguson, Architect, Irvington, New York. Mr. Ferguson submitted a letter dated October 18, 2000 outlining the questions he wished to present to the Board. In addition, Mr. Ferguson submitted extensive drawings including surveys (drawings L1 and L2), a grading and drainage plan, a landscape plan (L-5), a zoning analysis (A-01), and drawings of the proposed cellar, first floor, second floor and attic and roof, and elevations (A-06 through A-09). Neighbors, Mrs. Harriet Gamper, Mr. and Mrs. Frank Hoch and Mr. Frank Martucci had submitted a letter, by their attorney, raising questions about lot coverage and building

height. Mr. Ferguson stated that there were two questions, first the proper interpretation of Section 243-13 (coverage) and second the proper interpretation of 243-34 (height).

He said that the proposed plan would exceed the coverage limitations of the Code if concrete patios were included in the definition of a structure.

The Chairman noted that the plain meaning of the Code would include patios and he saw no reason to give an interpretation at odds with the plain meaning, a disposition which the Board, upon the Chairman's motion, duly seconded, unanimously approved.

The second question was an interpretation of the point at which a measurement of height should be taken, whether from a grade that exists prior to the alteration of a building, or the grade after the alteration. Again, the Board, upon the Chairman's motion, duly seconded, unanimously endorsed an interpretation that the grade is to

be measured from the completed building not before or from some intermediate stage of construction.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, unanimously adjourned.

George Rowe, Jr.